

FCC MAIL SECTION

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Federal Communications Commission

DA 99-801

DISPATCHED BY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),	)	MM Docket No. 99-132
Table of Allotments,	)	RM-9525
FM Broadcast Stations.)	
(Midland, Maryland))	
)	
(Evergreen, Montana)	)	MM Docket No. 99-133 ✓
	)	RM-9523
)	
(Victor, Montana or	)	MM Docket No. 99-134
Drummond, Montana)	)	RM-9543
	)	RM-9572
)	
(Groveton, Texas)	)	MM Docket No. 99-135
	)	RM-9522
)	
(Babb, Montana)	)	MM Docket No. 99-136
	)	RM-9570
)	
(Amazonia, Missouri)	)	MM Docket No. 99-137
	)	RM-9571
)	
)	
(Lovelady, Texas)	)	MM Docket No. 99-138
	)	RM-9569

NOTICE OF PROPOSED RULE MAKING

Adopted: April 21, 1999

Released: April 30, 1999

Comment Date: June 21, 1999

Reply Date: July 6, 1999

By the Chief, Allocations Branch

1. Before the Commission for consideration is a multiple docket Notice of Proposed Rule Making setting forth separate proposals to amend the FM Table of Allotments, Section 73.202(b) of the Rules. Each petitioner has stated that it will apply for its requested channel, if allotted.

We believe that each proposal warrants consideration because it complies with our technical requirements and would serve the public interest.

2. This is a multiple docket Notice of Proposed Rule making issued in response to a Commission Public Notice released October 2, 1998 (DA 98-1987). We are combining separate FM allotment proposals into a single Notice of Proposed Rule Making. Each proposal has its own docket and rule making number and the Commission's Reference Center will maintain a separate file for each docket. As discussed in the Public Notice, this procedure will conserve Commission resources and expedite the processing of FM allotment petitions for rule making by avoiding duplicative actions. We request comments and/or counterproposals to the following proposals:

A. MM Docket No. 99-132, RM-9525

Petitioner: West Wind Broadcasting

c/o Victor A. Michael, President
West Wind Broadcasting
6807 Foxglove Drive
Cheyenne, Wyoming 82009

Proposal: Allot Channel 258A at Midland, Maryland, as the community's first local broadcast service.

Community	Present	Proposed
Midland, Maryland	-----	258A

Coordinates: 39-40-19 NL and 78-57-25 WL

Additional Information: Channel 258A can be allotted to Midland with a site restriction. 9.1 kilometers (5.7 miles) north of the community. The site restriction will prevent a conflict with Channel 261A, Station WDZN, Romney, West Virginia. Canadian concurrence will be requested for the allotment at Midland as the proposed site is located within 320 kilometers of the U.S.-Canadian border. Midland is an incorporated community with its own post office and zip code (21542) and has a population of 574 people according to the 1990 U.S. Census.

FCC Contact: Kathleen Scheuerle, (202) 418-2180

B. MM Docket No. 99-133, RM-9523

Petitioner: Mountain West Broadcasting

c/o Victor A. Michael, President,
Mountain West Broadcasting
6807 Foxglove Drive
Cheyenne, Wyoming 82009

Proposal: Allot Channel 230A at Evergreen, Montana, as the community's first local broadcast service.

Community	Present	Proposed
Evergreen, Montana	-----	230A

Coordinates: 48-13-33 NL and 114-16-31 WL

Additional Information: Channel 230A can be allotted to Evergreen without a site restriction. Canadian concurrence will be requested since Evergreen is located within 320 kilometers of the U.S.-Canadian border. According to the 1998 Rand McNally Commercial Atlas and Marketing Guide, Evergreen is a Census Designated Place with a population of 4,109 people. Evergreen is located in Flathead County and utilizes a Kalispell post office and zip code.

FCC Contact: Kathleen Scheuerle, (202) 418-2180

C. MM Docket No. 99-134, RM-9543 and RM-9572

In this proposal, the Commission considers two separately-filed petitions for rule making that are mutually exclusive. We shall provide each proponent an opportunity to demonstrate in comments why its community should be preferred. In this regard, the parties should be guided by the allotment criteria set forth in Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).

Petitioners: Mountain West Broadcasting c/o Victor A. Michael, President Mountain West Broadcasting 6807 Foxglove Drive Cheyenne, Wyoming 82009	Battani Corporation Robert Lewis Thompson Taylor thiemann & Aitken, L.C. 908 King Street, Suite 300 Alexandria, Virginia 22314
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Proposal: Allot Channel 269C3 at Victor, Montana (RM-9543), as the community's first local broadcast service or Channel 268C at Drummond, Montana (RM-9572), as a first local service in that community..

Community	Present	Proposed
Victor, Montana	-----	269C3

OR

Drummond, Montana ----- 268C

Coordinates: 46-25-00 NL and 114-08-57 WL for Channel 269C3, Victor

46-16-47 NL and 113-31-05 WL for Channel 268C, Drummond

Additional Information: Channel 269C3 can be allotted to Victor without a site restriction. Since Victor is located within 320 kilometers of the U.S.-Canadian border, concurrence of the Canadian government will be requested for this allotment. Additionally, we find that Victor is an incorporated community with a population of 500 people according to the 1990 U.S. Census. Victor is located in Ravalli County and has its own post office and zip code (59875).

Channel 268C can be allotted to Drummond with a site restriction 51.8 kilometers (32.2 miles) southwest of the community. The site restriction avoids a short spacing to Station KZMT, Channel 266C, Helena, Montana. Since Drummond is located within 320 kilometers of the U.S.-Canadian border, concurrence of the Canadian government will be requested for this allotment. Additionally, we find that Drummond is an incorporated community located in Granite county. Drummond has its own post office and zip code (59832) and the 1990 U.S. Census credits the community with a population of 264 people. Parties filing comments are requested to present the Commission with specific information to demonstrate that Drummond has the social, economic and governmental indicia to qualify it as a "community" for allotment purposes. See Gretna, marianna, quincy and Tallahassee, Florida, 6 FCC Rcd 633 (1991) and cases cited therein.

FCC Contact: Kathleen Scheuerle, (202) 418-2180

D. MM Docket No. 99-135, RM-9522

Petitioner: Trinity County Radio

c/o Ann Bavender
Fletcher, Heald & Hildreth, P.L.C.
1300 N. 17th Street, 11th Floor
Arlington, Virginia 22209

Proposal: Allot Channel 251A at Groveton, Texas, as the community's first local transmission service.

Community	Present	Proposed
Groveton, Texas	-----	251A

Coordinates: 31-03-30 NL and 95-07-36 WL

Additional Information: The channel can be allotted to Groveton without a site restriction. Additionally, we find that Groveton is incorporated and the County Seat of Trinity County. Groveton has its own post office and zip code (75845) and has a population of 1,071 people according to the 1990 U.S.-Census.

FCC Contact: Kathleen Scheuerle

E. MM docket No. 99-136, RM-9570

Petitioner: Battani Corporation

c/o Robert Lewis Thompson
Taylor Thiemann & Aitken, L.C.
908 King Street, Suite 300
Alexandria, Virginia 22314

Proposal: Allot Channel 233C3 to Babb, Montana, as the community's first local broadcast service.

Community	Present	Proposed
Babb, Montana	-----	233C3

Coordinates: 48-45-34 NL and 113-31-17 WL

Additional Information: There is a site restriction 12 kilometers (7.4 miles) southwest of the community. Canadian concurrence will be requested for the allotment at Babb, Montana. Although the proposal for Channel 233C3 at Babb complies with the Commission's spacing requirements, we note that the community is located on the Blackfeet Indian Reservation. Therefore, parties filing comments should address this issue. Additionally, we find that Babb is located in Glacier County with its own post office and zip code (59411). According to the 1998 edition of the Rand McNally Commercial Atlas and Marketng Guide, Babb has a population of 45 people. Parties filing comments are requested to present the Commission with specific information to demonstrate that Babb has the social, economic and governmental indicia to qualify it as a "community" for allotment purposes. See Gretna, Marianna, Quincy and Tallahassee, Florida, 6 FCC Rcd 633 (1991) and cases cited therein.

FCC Contact: Kathleen Scheuerle, (202) 418-2180

F. MM Docket No. 99-137, RM-9571

Petitioner: Mountain West Broadcasting

c/o Victor A. Michael, President
Mountain West Broadcasting
6807 Foxglove Drive
Cheyenne, Wyoming 82009

Proposal: Allot Channel 273A to Amazonia, Missouri, as the community's first local broadcast service.

Community	Present	Proposed
Amazonia, Missouri	-----	273A

Coordinates: 39-56-34 NL and 94-51-22 WL

Additional Information: Channel 273A can be allotted to Amazonia with a site restriction 6.7 kilometers (4.1 miles) northeast of the community. Additionally, we note that Amazonia is an incorporated community located in Andrew County, has its own post office and zip code (64421) and is credited with a population of 257 people according to the 1990 U.S. Census. Parties filing comments are requested to present the Commission with specific information to demonstrate that Amazonia has the social, economic and governmental indicia to qualify it as a "community" for allotment purposes. See Gretna, Marianna, Quincy and Tallahassee, Florida, 6 FCC Rcd 633 (1991) and cases cited therein.

FCC Contact: Kathleen Scheuerle, (202) 418-2180.

G. MM Docket No. 99-138, RM-9569

Petitioner: Lovelady Broadcasting Company

c/o Ann Bavender
Fletcher, Heald & Hildreth, P.L.C.
1300 N. 17th Street, 11th Floor
Arlington, Virginia 22209

Proposal: Allot Channel 282C3 to Lovelady, Texas, as the community's first local broadcast service.

Community	Present	Proposed
Lovelady, Texas	-----	282C3

Coordinates: 31-09-51 NL and 95-27-09 WL

Additional Information: Channel 282C3 can be allotted to Lovelady in compliance with the Commission's spacing requirements provided there is a site restriction 4.1 kilometers (2.5 miles) north of the community. Lovelady is an incorporated community located in Houston County with its own post office and zip code (75851) and has a population of 587 people according to the 1990 U.S. Census.

FCC Contact: Kathleen Scheuerle, (202) 418-2180

3. Comments, reply comments, counterproposals and other pleadings filed in response to this multiple docket Notice of Proposed Rule Making should reference **only** the specific docket to which the filing pertains. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required in paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before June 21, 1999, and reply comments on or before July 6, 1999, and are advised to read the Appendix for the proper procedure. Additionally, a copy of any filing should be served on the petitioner listed for the particular docket.

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b) and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

6. For further information concerning a proceeding listed above, contact the FCC contact listed for that proceeding. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement.

Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, 445 Twelfth Street, S. W.; TW-A325, Washington, D. C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its Headquarters, Washington, D. C.